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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130426413-3934-02]

RIN 0648-BD24

Atlantic Highly Migratory Species; Vessel Monitoring Systems

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is modifying the reporting requirements for vessels required to use Vessel Monitoring System (VMS) units in Atlantic Highly Migratory Species (HMS) fisheries. This final rule requires vessel owners or operators, who have been issued HMS permits and are required to use VMS, to provide hourly position reports 24 hours a day, 7 days a week (24/7) via VMS. The final rule also allows the vessel owners or operators of such vessels to declare out of the HMS fishery when not fishing for or retaining HMS for a period of time encompassing two or more trips. This final action will continue to provide NOAA Office of Law Enforcement needed information on the target fishery and gear possessed in order to facilitate enforcement of closed areas and other HMS regulations, while reducing the reporting burden on vessel owners and operators. This action will also bring HMS fisheries regulations in line with VMS regulations in other fisheries. This rule affects all owners and/or operators of permitted vessels that fish for HMS and are required to use VMS.

DATES: This final rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER], except for amendatory instruction 2 to § 635.69, which is effective [Insert date of filing for public inspection with the office of the FEDERAL REGISTER].

ADDRESSES: Supporting documents and compliance guides are available from Cliff Hutt and Karyl Brewster-Geisz, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East West Highway, Silver Spring, MD 20910.

These documents and others also may be downloaded from the HMS website at www.nmfs.noaa.gov/sfa/hms/. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Office of Sustainable Fisheries and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: For information on this rule and requirements for Atlantic HMS fisheries contact, Cliff Hutt or Karyl Brewster-Geisz by phone at 301-427-8503 or by fax at 301-713-1917. For information on NMFS's VMS program, contact Pat O'Shaughnessy at NOAA OLE by phone at 800-758-4833 or by fax at 727-824-5318.

SUPPLEMENTARY INFORMATION:

Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Conservation Act (ATCA). Under the MSA, management measures must be consistent with ten National Standards, and fisheries must be managed to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under ATCA, the Secretary of Commerce shall promulgate regulations, as necessary and appropriate, to implement measures adopted by the International

Commission for the Conservation of Atlantic Tunas (ICCAT). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

On August 29, 2013, NMFS published a proposed rule (78 FR 53397) that considered a series of modifications to reporting requirements in Atlantic HMS fisheries. Three alternatives were analyzed in the proposed rule: require VMS hourly position reporting 24 hours a day, 7 days a week (24/7), whether the vessel is at sea or in port; require vessel owners or operators to hail-in (i.e., declare their return date, location, and time of landing as required at 50 CFR 635.69(e)(3)) no more than 12 hours, and no less than three hours, before landing; and give vessel owners or operators who will not be fishing for or retaining HMS for periods of time encompassing two or more fishing trips the option to declare out of the fishery. The proposed rule contained details regarding the alternatives considered and a brief summary of the recent management history. Those details are not repeated here.

This final rule finalizes the provisions proposed in the August 29, 2013, rule without change. The purpose of this final action is to continue to provide NOAA Office of Law Enforcement needed information on the target fishery and gear possessed in order to facilitate enforcement of closed areas and other HMS regulations, and to bring HMS fisheries regulations in line with VMS regulations placed on other fisheries, while reducing the reporting burden on vessel owners or operators. All of the new requirements such as 24/7 reporting and changes to the hail in and hail out procedures will take effect on [insert date 30 days after date of publication in the FEDERAL REGISTER] except that vessel owners or operators could begin to declare out of HMS fisheries on [insert date of filing for public inspection with the office of the FEDERAL REGISTER].

With this final rule, NMFS is requiring that as of [insert date 30 days after date of publication in the FEDERAL REGISTER] all VMS units in Atlantic HMS fisheries remain on to provide hourly position reports 24 hours a day, 7 days a week, whether the vessel is at sea or in port. The change to 24/7 location reporting eliminates the requirement to hail out at least two hours before leaving port, and allows vessel operators to hail out (i.e., declare their target species and gear type as required by regulations at 50 CFR 635.69 (e)(2)) when actually leaving port. Consistent with existing regulatory requirements regarding times that VMS must be used by particular fisheries, vessels with pelagic longline gear onboard, which are required to use VMS units year round, now will be required to provide 24/7 location reporting year round. Vessels with a shark limited access permit (LAP) and gillnet gear onboard now will be required to provide 24/7 location signals from November 15 through April 15 of each year. Vessels with a shark LAP and bottom longline gear onboard that operate between 33°00' N. latitude and 36°30' N. latitude now will be required to provide 24/7 location signals from January 1 through July 31 each year. Vessel owners or operators must request and receive a documented “power down” exemption for a vessel to be exempt from the VMS requirements if they need to turn off their VMS unit for reasons such as placing the vessel in drydock for repairs or suspending all fishing activity for an extended period. Under those or similar situations, vessel owners or operators should contact NOAA OLE (see FOR FURTHER INFORMATION CONTACT) to request a documented power down exemption. Additionally, as of [insert date 30 days after date of publication in the FEDERAL REGISTER], vessel owners or operators must hail in no more than 12 hours, and no less than three hours, before landing.

Finally, as of [insert date of filing for public inspection with the office of the FEDERAL REGISTER], vessel owners or operators that will not be fishing for or retaining HMS for periods

of time encompassing two or more fishing trips may declare out of the fishery. Once a vessel owner or operator declares a vessel out, that vessel would be exempt from the HMS hail-in/hail-out VMS requirements. If a vessel is declared out of the fishery, but incidentally catches any HMS while fishing that the vessel owner or operator wishes to retain, the vessel owner or operator must declare the vessel back in to the fishery by issuing a “hail out” to specify the target species and fishing gear used while at sea before landing with any HMS. The vessel must also hail-in on that trip consistent with the timing requirements of this final rule to report advance notice of HMS landing to NMFS. Before leaving for the next trip, the vessel owner or operator must declare the vessel out of the HMS fishery again if the vessel will not be fishing for or retaining HMS for a period of time encompassing two or more trips. If the vessel does not declare out of the HMS fishery, the vessel owner or operator then needs to hail out consistent with the timing requirements in this rule, before leaving on the next fishing trip. It is important to note that declaring out of the HMS fishery exempts the vessel owner or operator only from the HMS VMS hail in/hail out requirements; the vessel’s VMS unit must remain on and must continue to provide hourly position reports. All other requirements and restrictions for vessels that have an HMS permit still apply (e.g., those vessels are not allowed in relevant closed or gear restricted areas), and other applicable VMS requirements for any other fisheries they are participating in still apply. Vessels that have declared out of the HMS fishery must resume hailing-in and hailing-out for each fishing trip before again fishing for or retaining HMS.

Comments and Responses

NMFS received three written and several verbal comments from non-governmental organizations, fishermen, and other interested parties on the proposed rule. NMFS heard comments from constituents during a public webinar/conference call and at the Atlantic HMS

Advisory Panel meeting. A summary of the comments received on the proposed rule during the public comment period is provided below with NMFS's response. Some of the comments received were in regard to issues outside the scope of this rulemaking (e.g., the use of VMS to protect right whales in their calving grounds off Georgia and whether the regulations will be enough to protect calving right whales if the Navy builds its planned submarine training ground next to the calving area) and are not summarized below. All written comments submitted during the comment period can be found at <http://www.regulations.gov/> by searching for RIN 0648-BD24.

Comment 1: Requiring vessels to provide hourly location signals whether at sea or in port will increase costs for commercial HMS fishermen, but allowing for documented power down exemptions when vessels remain in port for extended periods will help to reduce some of those costs.

Response: Requiring vessels to provide hourly position reports via VMS could result in minor increased costs for vessel owners whose VMS service plans charge per report. For plans that charge per position report, the costs are approximately \$0.06 per report or \$1.44 per day. However, most VMS service plans charge a flat monthly rate for hourly position reporting, and vessel owners with these plans will experience no change in their reporting costs. Additionally, NMFS has received comments in the past that some HMS vessel owners/operators already leave their VMS units on while at port, so the changes in this rule would not result in any increased reporting costs for them. NMFS agrees that allowing for documented power down exemptions could help reduce costs for those vessel owners that have VMS service plans that charge per position report, although such exemptions are granted only in limited circumstances. OLE may grant "power down exemptions" to vessels if they need to turn off their VMS unit for reasons

such as placing the vessel in drydock for repairs or suspending fishing activity for an extended period. It should be noted that a “power down” exemption is different from declaring out of the HMS fishery when not fishing for HMS for two or more trips. A “declaration out” of the HMS fishery only exempts a vessel from the requirement to hail in and hail out of the HMS fishery; the vessel’s VMS unit must remain on and must continue to provide hourly position reports even during its time out of the HMS fishery.

Comment 2: Allowing HMS fishermen to hail out as they are leaving port as opposed to two hours in advance of leaving port will shorten the lead time that fishermen must arrive at their vessel prior to departing on a trip.

Response: NMFS received feedback on several occasions from Atlantic HMS fishermen indicating that the requirement to issue a hail-out declaration two hours before leaving port was especially burdensome because of the lead time required prior to trip departure. This final rule allows vessel owners and operators to hail-out when leaving port instead of requiring them to do so two hours in advance. The previous requirement to hail-out two hours in advance of leaving port was meant to ensure NOAA OLE received at least one position report from the vessel while it was still in port. Thus, requiring 24/7 hourly position reports makes hailing-out two hours prior to leaving port unnecessary to accomplish NOAA OLE’s enforcement needs.

Comment 3: NMFS received a comment in support of the proposed VMS rule as it allows regulators to better monitor the activities of commercial operators and thus has the potential to provide better protection of at-risk species in the opinion of the commenter.

Response: NMFS agrees that the changes this rule makes to VMS reporting requirements in Atlantic HMS fisheries will allow NMFS and NOAA OLE to better monitor the activities of vessels fishing for or retaining Atlantic HMS, and enforce Atlantic HMS regulations and closed

areas. In doing so, this action may well provide for better protection of any “at risk” species affected by Atlantic HMS fisheries.

Comment 4: NMFS should require half-hourly reporting including speed and location which is especially important for pelagic fisheries to gather information about fishing effort, logbook data, and to effectively implement and enforce time/area closures. Half-hourly reporting is consistent with other federally managed fisheries (e.g., it is required in scallop fisheries) to facilitate enforcement of time/area closures.

Response: While this rulemaking specifies when owners or operators of HMS-permitted vessels are required to provide position reports, it was not the objective of this rulemaking to change the time interval between individual position reports. The time between position reports (i.e., polling frequency) is different for different fisheries. While half-hourly location signals may be practical and necessary in fisheries involving multiple, short dredge tows each day, at this time, such frequent position reports are not necessary to monitor fisheries that use gears that are fished multiple hours at a time as is the case in Atlantic HMS fisheries. In general, most HMS fishing activities, such as steaming to fishing location or setting the gear, are conducted over multiple hours, so having a time interval shorter than an hour between individual position reports is not considered necessary in the HMS fishery at this time to aid in the enforcement of closed areas. Additionally, many of the closed areas established for HMS fisheries (e.g., § 635.21(c)(2)) encompass large areas that cannot be crossed by fishing vessels in less than an hour. If NOAA OLE determines that changes in the reporting frequency of location signals are necessary in Atlantic HMS fisheries due to enforcement concerns, or if other relevant issues arise, NMFS could revisit this issue in the future.

Comment 5: NMFS needs to provide guidance in the regulations on what commercial fishermen should do when their VMS units are not operating properly due to loss of power resulting from electrical malfunctions or maintenance.

Response: This rulemaking does not change the existing regulations that require affected vessels to possess and use type-approved VMS units. It is the vessel owner's or operator's responsibility to ensure that a VMS unit is working properly. Vessel owners and/or operators experiencing unanticipated power outages, or malfunctions in their VMS units should contact NOAA OLE to notify them of the situation as soon as possible at 888-219-9228 or 727-824-5344.

Changes from the Proposed Rule

Except for the administrative changes needed to implement portions of the regulations at different times and editorial changes to add clarity, there are no changes from the proposed rule.

Classification

The NMFS Assistant Administrator has determined that this final action is consistent with the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, the MSA and National Standards, and other applicable law.

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for purposes of E.O. 12866.

Paperwork Reduction Act

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0372. Public reporting burden for hail-out and hail-in declarations are estimated to average 2 minutes per response, or 4.10 hours per year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing

the collection of information. NMFS estimates that the final action, which would allow for long-term declarations out of the fishery, which would exempt vessel owners and operators from hailing in and out for each trip during that time frame, could theoretically reduce the average reporting burden hours for each vessel that declares out of the HMS fishery long-term declaration by as much as 4 hours if it declares out for the entire HMS fishing season. Hourly position reports are not considered a form of reporting burden because they are issued automatically by the VMS unit. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) or by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Regulatory Flexibility Act

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), as required by 5 U.S.C. 604 of the Regulatory Flexibility Act (RFA), to analyze the economic impacts that this final rule would have on small entities. The full FRFA is included below.

Section 604(a)(1) of the RFA requires that the Agency describe the need for, and objectives of, the final rule. A description of the final action, why it is being considered, and the legal basis for this final action are summarized here and described in more detail in the preamble to the proposed rule. The purpose of this final rulemaking, consistent with the MSA and the 2006 Consolidated HMS FMP and its amendments, is to aid NOAA OLE in compliance monitoring and enforcement of HMS fisheries regulations while also minimizing the reporting

burden on vessel owners or operators. The final action would provide vessel owners or operators with additional flexibility regarding the hail-out requirement and require that the VMS remain on at all times that VMS use is required unless the vessel operator has obtained a documented power down exemption from NOAA OLE. Specifically, HMS-permitted vessels that are required to use VMS could declare out of the fishery if they do not intend to fish for or retain HMS for two or more consecutive trips. Declaring out exempts the vessel from the requirement to hail-out before every trip (which can be daily for some fisheries) and hail-in before returning from every trip, but does not exempt them from other applicable HMS regulations (e.g., gear requirements, time/area closures, etc.) or from applicable regulations in other fisheries, including VMS requirements. Additionally, the vessel's VMS unit would still need to remain on 24 hours a day, 7 days a week to provide hourly position reports for the duration of the long-term declaration out of the fishery. Requiring VMS units to remain on at all times would mean vessel owners or operators could hail-out when they are actually leaving port rather than having to do so at least two hours in advance. These changes will not affect enforcement capabilities and are, in part, a result of public feedback indicating that the previous hail-out requirements were burdensome. Vessel owners or operators would still be required to hail-in at least three hours before landing, but would also be required to do so no more than 12 hours before landing. These changes considered the need of NOAA OLE agents to have information on target species and gear being deployed in order to facilitate enforcement of closed areas and other regulations. VMS reporting facilitates monitoring and enforcement of closed areas implemented to reduce bycatch of undersized swordfish, sharks, sea turtles, and other species necessary to comply with the Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Standard 9 (bycatch and bycatch mortality reduction) of the MSA.

Section 604(a)(2) requires a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA) and statement of any changes made in the proposed rule as a result of such comments. The Agency received comments concerning the IRFA stating that requiring 24/7 hourly position reports would increase reporting costs for Atlantic HMS vessel owners, but that allowing for documented power down exemptions when a vessel remains in port for an extended period will help reduce some of those costs. Requiring vessel owners or operators to provide hourly position reports will result in minor increased costs for some vessel owners whose VMS service plans charge per report. On average, these plans charge approximately \$0.06 per position report or \$1.44 per day, and these costs and the ability of vessel owners to obtain exemptions allowing for a vessel to be powered down for extended periods were reflected in the analysis provided in the IRFA and proposed rule. Also, most VMS service plans charge a flat monthly rate of hourly position reports, and vessel owners with these plans will experience no change in their reporting costs. As such, NMFS did not alter the cost analysis in the FRFA and final rule. No other comments regarding the economic impact were received.

Under 5 U.S.C. 604(a)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Previously, a business involved in fish harvesting was classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. In addition, SBA has defined a small charter/party boat entity (NAICS code 713990, recreational industries) as one with average

annual receipts of less than \$7.0 million. On June 20, 2013, SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398; June 20, 2013). The rule increased the size standard for Finfish Fishing from \$ 4.0 to 19.0 million, Shellfish Fishing from \$ 4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS does not believe that the new size standards affect analyses prepared for this action. NMFS estimates that this final rule would require 308 vessels deploying either pelagic longline, bottom longline, or gillnet gear in HMS fisheries to use their VMS units to send hourly location reports 24 hours a day, 7 days a week. The action would also allow vessel owners and operators the option to declare out of the HMS fishery for a period of time encompassing two or more trips during which the vessel will not be fishing for or retaining HMS. Such a declaration would exempt the vessel owner or operator from hail-in and hail-out requirements until the vessel resumes fishing for and retaining HMS at which time the vessel will need to resume hailing-out and hailing-in for each trip.

Under section 604(a)(4), Federal agencies must provide a description of the projected reporting, recordkeeping, and other compliance requirements of the rule. This final action will give vessel owners and operators that do not plan to fish for or retain HMS for a period of time encompassing two or more trips the option to declare out of the HMS fishery, which would exempt them from having to hail-out and hail-in for each trip. Additionally, the 308 HMS vessels currently required to use VMS units will be required to leave their VMS units on 24 hours a day, 7 days a week, to issue hourly position reports. This requirement will also allow

vessels fishing for HMS to wait until they leave port to hail-out as opposed to being required to do so at least two hours before leaving port. Finally, this final rule will also require vessel owners or operators to hail-in at least three hours before landing, but no more than 12 hours before doing so.

One of the requirements of a FRFA is to describe any alternatives to the rule that accomplish the stated objectives and that minimize any significant economic impacts (5 U.S.C. 604(a)(5)). These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603 (c) (1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this final rule, consistent with the MSA, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all of the participants in Atlantic HMS fisheries are considered small entities. Thus, none of the alternatives being considered fall under the first and fourth categories described above.

Furthermore, because the purpose of this rulemaking is to modify existing VMS reporting requirements, the use of performance standards, such as those mentioned in the third category above, would not be suitable to achieve the goals of this rulemaking. Finally, the modification to the hail-out/hail-in requirement is expected to reduce the burden of reporting for vessels not

fishing for or retaining HMS and provide NOAA OLE agents with additional information to accurately monitor fishing activities. Furthermore, the requirement for vessel owners/operators to keep the VMS unit on 24 hours a day, 7 days a week will not increase reporting burden over the current requirement (i.e., only having the VMS on while away from port and at least two hours before leaving port) because the hourly position reports are automated. This action would also eliminate the need for vessel owner or operators to hail-out at least two hours before leaving port, and hourly position reports are included in the base cost of the VMS unit plans offered by most providers. Since the purpose of the requirement to hail-out at least two hours before leaving port was to ensure NOAA OLE received at least one position report from a vessel before it left port, switching to 24 hours a day, 7 days a week reporting under this final rule would make advance hail-outs unnecessary. As such, NMFS has determined that this rulemaking meets the objectives stated in the second category. NMFS analyzed several alternatives in this rulemaking, and the rationale for selecting the preferred alternatives is provided below.

NMFS considered two categories of issues related to the use of VMS by vessels permitted to fish for Atlantic HMS; each issue had its own set of alternatives. The first category (Alternatives A1-A2) addressed the required frequency of hourly position reports issued by VMS units used by HMS-permitted vessels, and whether vessel operators should be allowed to power down their VMS units between trips. The second category (Alternatives B1-B3) addressed hail-out/hail-in requirements, and proposed the addition of long-term declarations (i.e., ‘declare out of fishery’ option) to the options available to vessels operating under HMS commercial permits. The preferred alternatives included Alternative A2 and Alternative B2. The potential economic impacts that would occur under these preferred alternatives were compared with the other

alternatives to determine if economic impacts to small entities could be minimized while still accomplishing the goals of this rule.

For the hourly position reports, Alternative A1, the no action alternative, would maintain the existing VMS requirements in Atlantic HMS fisheries which allow vessel operators to power down their VMS units while at port, and require them to power them back on at least two hours before leaving port for their next trip. Alternative A2, the preferred alternative, would require that Atlantic HMS vessels provide hourly position reports 24/7, during those periods of the year in which they are required to use VMS, unless extenuating circumstances (e.g., scheduled maintenance, putting the boat in drydock) warrant powering the VMS unit down. In such circumstances, vessel operators would need to contact NOAA OLE to request a documented power down exemption. Additionally, this alternative would eliminate the requirement for vessel operators to hail-out at least two hours before leaving port, and would instead allow them to wait until they are actually leaving port to hail-out. The justification for the current requirement to hail-out two hours before leaving port was to ensure that VMS units would transmit at least one position report while the vessel was still in port. The proposed change to 24/7 location reporting would obviate the need for this requirement. Alternative A2 would also require vessel operators to hail-in at least three hours before landing, but no more than 12 hours before doing so. NMFS proposed this change because the open-ended requirement previously specified in the regulations allowed vessel operators to submit hail-in declarations days before landing, making it difficult for enforcement agents to determine when a vessel would actually land.

NMFS estimated the costs of 24/7 hourly position reports for all vessels by calculating the average monthly costs from the five main providers of VMS units and services. The monthly

cost of these plans ranges from \$35 to \$50 per month (average cost \$44 per month) and include 24/7 hourly position reports and data costs associated with electronic messaging. It is likely that this pricing model has been adopted because most fisheries using VMS already require 24/7 reporting. Annual costs of compliance for both alternatives for vessel owners are estimated to be \$528, \$308, and \$220 per vessel for pelagic longline, bottom longline, and shark gillnet vessels, respectively (Table 1). NMFS does not anticipate these costs to be different from current monthly VMS costs for most HMS vessel owners since most VMS providers use plans that include 24/7 hourly position reports and data (for making hail-in/hail-outs and other declarations). For purposes of estimation, NMFS assumed continuous reporting over the course of the year, or that portion of the year in which HMS-permitted vessels are required to use VMS. Additionally, maintenance costs for VMS units are estimated at \$500 per vessel per year, but changing to 24/7 reporting is not expected to affect these costs. Changing to 24/7 position reporting would, however, eliminate the need for vessel operators to hail-out at least two hours before leaving port, thus giving them greater flexibility in scheduling trips. The preferred alternative was selected over the no action alternative because it will provide better reporting information to NOAA OLE for enforcement purposes, reduces the reporting burden on HMS vessel owners and operators, and is not estimated to represent a significant increase in costs for HMS vessel owners and operators.

Next, NMFS considered alternatives to modify hail-in/hail-out reporting requirements to include declarations that can apply to multiple trips. Alternative B1, the no action alternative, would maintain the requirement to hail-in/hail-out for each fishing trip. HMS vessel owners and operators required to use VMS were required to hail-out before each fishing trip to report which species they will be targeting, and the type of gear they will be fishing, and hail in prior to

landing to indicate the location, date, and approximate time they will return to port. Alternative B2, the preferred alternative, would allow vessels not fishing for or retaining HMS for two or more trips to advise NMFS as such by declaring out of the HMS fishery. Vessels that declare out of the fishery would be exempted from hailing-in/hailing-out each trip, but would still be required to follow all other Atlantic HMS regulations including continuing to provide 24/7 position reports on their VMS units. Vessels that have declared out of the fishery would still have the option to land HMS if they catch them incidentally, but would have to first declare back into the HMS fishery by hailing out consistent with 50 CFR 635.69 (e)(5)(ii), and then hailing in at least three hours, and no more than 12 hours, before landing.

Table 1. Estimated Costs of Compliance Under Current VMS Regulations in Affected HMS Fisheries. No Change in Costs is Expected Under the Final Rule for Most Vessels.

	Pelagic Longline Vessels	Shark Bottom Longline Vessels	Shark Gillnet Vessels
Monthly E-MTU VMS Unit Plans average including 24/7 Position Reports and data	\$44.00	\$44.00	\$44.00
Estimated Days (Months) Fishing/Year	324 (12)	212 (7)	152 (5)
Annual Compliance Costs/ Vessel (\$44/month * months fishing/year)	\$528/vessel	\$308/vessel	\$220/vessel
Annual Compliance Costs + Maintenance Costs (\$500/year)	\$1,028	\$808	\$720
Annual Number of Fishing Trips	36	212	152
Number of Affected Vessels	253	25	30
Annual Cost for all Vessels	\$260,084	\$20,200	\$21,600

* The declaration costs per trip will vary based upon the number of target species and gear types possessed onboard as operators would be required to submit one declaration for each target fishery/fishing gear type possessed.

Based on public comments received prior to this rulemaking, NMFS assumed that many, if not all, shark gillnet and bottom longline vessel owners or operators would declare out of the HMS fishery for at least part of the season in which they are required to use VMS. NMFS expects few, if any, vessel owners or operators using pelagic longline to declare out of the HMS fishery as most of these vessels target HMS almost exclusively. Therefore, to assess the effect of Alternatives B2 on reporting burden, NMFS estimated the total number of HMS fishing trips that bottom longline vessels from Virginia to South Carolina and shark gillnet vessels could take annually and thus be required to make daily hail-in/hail-outs (Table 1). The estimates vary by gear type possessed onboard. Bottom longline vessels primarily target large coastal sharks (LCS) and Council-managed species (snapper/grouper, tilefish, etc.). Bottom longline vessels from Virginia to South Carolina (between 33°00' N. latitude and 36°30' N. latitude) are required to use VMS to provide hourly position reports from January 1st to July 31st of each year to facilitate enforcement of the Mid-Atlantic bottom longline closed area. In recent years, except for 2013, the season for LCS in the Atlantic region has not opened until July 15, resulting in a two-week period where vessels could be fishing for or retaining LCS with bottom longline gear and would be required to use VMS. However, seasons for small coastal sharks (SCS), pelagic sharks, and Council-managed species also require consideration as affected vessels may be fishing for other species with bottom longline gear onboard. NMFS assumes that approximately 50 bottom longline vessels could be fishing (day trips) in the vicinity (between 33°00' N. latitude and 36°30' N. latitude) of the Mid Atlantic bottom longline closed area where VMS is required during the entire 212 day-closure (January 1–July 31), resulting in 212 trips per year. Shark gillnet vessels can target LCS, SCS, and Council-managed species, but have targeted sharks less in recent years. The gillnet fishery primarily targets SCS and blacktip sharks (included in the

aggregate LCS management group in the Atlantic region and as its own management group in the Gulf of Mexico region). Season length for the different shark management groups varies annually based on quota availability, catch rates, and other considerations. Many shark gillnet vessels have been issued permits that allow them to participate in other fisheries using gillnet gear; therefore, to estimate burden, NMFS assumed that affected vessels could be engaged in fishing activities and subject to VMS requirements from November 15 – April 15 for the duration of this time period every year (152 days). NMFS also assumed that gillnet and bottom longline vessels would land once every 24 hours to offload catch and procure supplies. Based on public comments received prior to this rulemaking, NMFS expects that many gillnet and bottom longline vessel owners and operators would make long-term declarations out of the fishery if given the option, which would require them to make only one declaration report. However, if HMS are caught during a trip and the vessel operator wishes to land them, they must hail out to declare back into the HMS fishery and then hail in with NOAA OLE at least three hours, and no more than 12 hours, before landing. While NMFS does not expect there to be a difference in costs for vessel owners between Alternatives B1 and B2, Alternative B2 could result in a substantial reduction in reporting burden for vessels not fishing for or retaining HMS. For this reason and because the enforcement capabilities are the same under either alternative, we selected Alternative B2.

Finally, Alternative B3 would have allowed vessels fishing for the same HMS with the same gear for two or more consecutive trips to make long-term declarations into the HMS fishery which would exempt them from making daily hail out declarations, but would still require them to hail in before landing HMS. NMFS determined that pelagic longline vessel owners or operators would be most likely to take advantage of a long-term declaration into the

HMS fishery as many of those vessels target HMS almost exclusively. Logbook data (2006-2009) for pelagic longline vessels indicates that across all regions and months of the year, vessels make approximately 6.7 sets per trip. Each set takes approximately one day. For the purpose of estimation, seven sets per trip were used in the following calculations. Vessels would require at least one day transiting to and from fishing grounds and at least one day in between fishing trips for offloading. Therefore, NMFS estimates that average pelagic longline trips are 10 days (7 days fishing + 2 days transit + 1 day offload/resupply) in duration, meaning vessels could make up to 36 complete trips per year (365 days per year / 10 days per trip). Under Alternative B3, aside from the initial long-term declaration into the fishery, declaration reports would only be required prior to landing (1 declaration/trip). Assuming the vessels make 36 trips per year, they would submit 37 declarations (36 trips per year * 1 declaration per trip + 1 long-term declaration into the fishery = 37 declarations per year), which are included in the cost of the VMS unit plans offered by most providers. These calculations would represent a maximum possible burden on pelagic longline vessels in Alternative B3 were adopted. NMFS assumed that costs will vary slightly among individual vessel owners based on the number of days at sea per year, the VMS provider, and the number of messages and reports sent and received using the VMS unit. While NMFS does not expect there to be a difference in costs for vessel operators between Alternatives B1 and B3, Alternative B3 would result in a reduction in reporting burden for vessels exclusively fishing for HMS as they would only have to make one declaration per trip. However, because this alternative would potentially complicate NOAA OLE's ability to monitor vessels fishing for HMS by reducing the frequency of communication with vessel owners or operators, and eliminating notification of when HMS trips are beginning, this alternative was not selected.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the compliance guide for this final rule are available (see ADDRESSES).

Administrative Procedure Act

The Assistant Administrator for Fisheries finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the provision of this rule that allows vessel owners/operators to declare out of the HMS fishery. Under current regulations, vessel owners or operators who have been issued HMS permits but who do not fish for or retain HMS exclusively must hail out every time they leave for a fishing trip. The new “declare out” process in this rule would reduce regulatory burden: under this provision, vessel owners/operators would not be subject to unnecessary reporting requirements when their vessels are not fishing for HMS. There is a need to make this provision effective quickly, because gillnet vessels with a directed shark LAP are required to resume reporting with VMS on November 15, 2013, and NMFS wants to ensure that the declare out optional process is available at that time as the shark fisheries they pursue (Atlantic small and large coastal sharks) are closed until January 1, 2014. Vessel owners/operators will not need time to come into compliance with or take other action with regard to the provision. It is optional, and vessel owners/operators can “declare out” using their existing approved VMS units. For the above reasons, the delay in effective date is waived for the “declare out” provision, and the provision will be effective immediately upon the filing of this final rule with the Office of the Federal Register.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: November 12, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

2. In § 635.69, effective [Insert date of filing for public inspection with the office of the FEDERAL REGISTER], paragraph (e)(4) is added and reserved, and paragraph (e)(5) is added to read as follows:

§ 635.69 Vessel monitoring systems.

* * * * *

(e) * * *

(4) [Reserved]

(5) Vessel owners or operators that decide not to fish for or retain HMS for a period of time encompassing two or more trips may follow the requirements of this paragraph (e)(5) in lieu of paragraphs (e)(2) and (e)(3) of this section.

(i) If a vessel owner or operator decides not to fish for or retain HMS for a period of time encompassing two or more trips, that owner or operator may choose to “declare out” of the fishery. To “declare out,” the vessel owner or operator must contact NMFS using an attached VMS terminal to indicate the operator does not plan to fish for or retain HMS. By “declaring out” of the HMS fishery, the vessel owner or operator is exempt from the requirements of paragraphs (e)(2) and (e)(3) of this section, unless the circumstances described in paragraph (e)(5)(ii) of this section apply, but must still comply with all other HMS regulations that are applicable to the vessel including area and gear closures.

(ii) If a vessel owner or operator has advised NMFS that it will not be fishing for or retaining HMS as described in paragraph (e)(5)(i) of this section, but incidentally catches and retains any HMS while fishing, the vessel owner is required to change the target species declaration and advise NMFS, as described in paragraph (e)(2) of this section while at sea before

landing with any HMS. The vessel must also report advance notice of landing to NMFS as described in paragraph (e)(3) of this section.

(iii) Once the vessel owner or operator changes the declaration per paragraph (e)(5)(ii) of this section, that vessel is assumed to be fishing under the requirements of paragraphs (e)(1) through (e)(3) of this section until the vessel owner or operator makes another declaration under paragraph (e)(5) of this section.

* * * * *

3. In § 635.69, effective [Insert date 30 days after date of publication in the FEDERAL REGISTER], paragraphs (a)(1) through (3), the introductory text of paragraph (d), and paragraphs (e)(1) through (3) are revised, to read as follows:

§ 635.69 Vessel monitoring systems.

(a) * * *

(1) Whenever the vessel has pelagic longline gear on board;

(2) Whenever a vessel issued a directed shark LAP, has bottom longline gear on board, is located between 33°00' N. lat. and 36°30' N. lat., and the mid-Atlantic shark closed area is closed as specified in § 635.21(d)(1); or

(3) Whenever a vessel issued a directed shark LAP has gillnet gear on board from November 15-April 15.

* * * * *

(d) Installation and activation. Only an E-MTU VMS that has been approved by NMFS for Atlantic HMS Fisheries may be used. Any VMS unit must be installed by a qualified marine

electrician. When any NMFS-approved E-MTU VMS is installed and activated or reinstalled and reactivated, the vessel owner or operator must—

* * * * *

(e) * * *

(1) Owners or operators of vessels subject to requirements specified in paragraph (a) of this section must ensure the VMS unit is on so that it will submit automatic position reports every hour, 24 hours a day. Except as otherwise noted in this paragraph (e)(1), the VMS unit must always be on, operating and reporting without interruption, and NMFS enforcement must receive hourly position reports without interruption. No person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement. Owners of vessels may request a documented power down exemption from NMFS enforcement if the vessel will not be fishing for an extended period of time. The request must describe the reason an exemption is being requested; the location of the vessel during the time an exemption is sought; the exact time period for which an exemption is needed (*i.e.*, the time the VMS signal will be turned off and turned on again); and sufficient information to determine that a power down exemption is appropriate. Approval of a power down must be documented and will be granted, at the discretion of NMFS enforcement, only in certain circumstances (e.g., when the vessel is going into dry dock for repairs, or will not be fishing for an extended period of time).

(2) Hailing out. Prior to departure for each trip, a vessel owner or operator must initially report to NMFS declaring any highly migratory species the vessel will target on that trip and the specific type(s) of fishing gear that will be on board the vessel, using NMFS-defined gear codes.

If the vessel owner or operator participates in multiple HMS fisheries, or possesses multiple fishing gears on board the vessel, the vessel owner or operator must submit multiple electronic reports to NMFS. If, during the trip, the vessel switches to a gear type or species group not reported on the initial declaration, another declaration must be submitted before this fishing begins. This information must be reported to NMFS using an attached VMS terminal or using another method as instructed by NMFS enforcement.

(3) Hailing in. A vessel owner or operator must report advance notice of landing to NMFS. For the purposes of this paragraph (e)(3), landing means to arrive at a dock, berth, beach, seawall, or ramp. The vessel owner or operator is responsible for ensuring that NMFS is contacted at least 3 hours and no more than 12 hours in advance of landing regardless of trip duration. This information must be reported to NMFS using an attached VMS terminal and must include the date, approximate time, and location of landing.

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[FR Doc. 2013-27418 Filed 11/14/2013 at 8:45 am; Publication Date: 11/15/2013]